

U.S. Fish and Wildlife Serv., Interior

§ 83.4

Budget under 44 U.S.C. 3507 and assigned control number 1018-0048.

§ 83.1 Definitions.

As used in this part, the following terms mean:

(a) *Act*. The Fish and Wildlife Conservation Act of 1980, Pub. L. 96-366 (16 U.S.C. 2901, *et seq.*).

(b) *Conservation plan*. A plan for the conservation of fish and wildlife within a State which meets the requirements set forth in this part.

(c) *Designated State agency or State agency*. The Commission, department, division or other agency of a State which has the primary legal authority for the conservation of fish and wildlife. If more than one agency is designated by the State to exercise such authority, the term means each such agency acting with respect to its assigned responsibilities.

(d) *Director*. The Director of the U.S. Fish and Wildlife Service or his/her designee.

(e) *Federal Aid Manual*. The publication of the U.S. Fish and Wildlife Service which contains policies, standards and procedures required for participation in the benefits of the Act.

(f) *Fish and Wildlife*. Wild vertebrate animals that are in an unconfined state.

(g) *Nongame fish and wildlife*. Fish and wildlife that:

(1) Are not ordinarily taken for sport, fur, food, or commerce within the State except that any species legally taken for sport, fur, food, or commerce in some but not all parts of a State may be deemed nongame within any area where such taking is prohibited; and

(2) Are not listed as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543); and

(3) Are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)); and

(4) Are not domesticated species that have reverted to a feral existence.

(h) *Plan species*. Any species or subspecies or ecologic association of species and subspecies which is designated to be addressed through actions set forth in an approved conservation plan.

(i) *Project*. A definitive proposal submitted by a State and approved by the regional director for funding under this Act.

(j) *Regional Director*. The regional director of the U.S. Fish and Wildlife Service or his/her designee.

(k) *Secretary*. The Secretary of the Interior or his/her designee.

(l) *State*. Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 83.2 Participant eligibility.

Participation is limited to designated State agencies. If a State places primary legal authority for the conservation of fish and wildlife in more than one agency, the governor or chief executive of that State shall designate the State agency which will serve to coordinate the State actions under this Act. The director of each designated State agency shall notify the regional director, in writing, of the official(s) authorized to sign Federal Aid documents and of any changes in such authorizations.

§ 83.3 Allocation of funds.

In accordance with the provisions of the Act, the allocation of funds to the States shall take into account the area and population of each State.

(a) Area of the land and water of each State shall be as determined by the Department of Commerce and shall include the area of coastal and Great Lakes waters within each State.

(b) Population of each State shall be the most recent population estimates, as determined by the Department of Commerce.

§ 83.4 Eligible undertakings.

Funding under this Act may be approved by the regional director to carry out projects which meet the standards of substantiality as defined in § 83.12 and which conform to one of the following:

(a) A proposal to implement a nongame action in lieu of an approved conservation plan. Upon a showing of need, a State may request funding

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under this Act before a conservation plan is approved. Such a proposal must:

(1) Be for the purpose of conserving, restoring, or otherwise benefitting nongame fish and wildlife, its habitats or its users;

(2) Comply with standards contained in the Federal Aid Manual; and

(3) Consist of work to be accomplished before October 1, 1986.

(b) A proposal to develop or maintain a conservation plan. The designated State agency may apply for funding of a project for developing a conservation plan, coordinating or consolidating a conservation plan with other plans, or maintaining a previously approved conservation plan. State costs incurred later than September 30, 1991, for the development of a conservation plan cannot be approved for funding.

(c) A proposal to implement actions described in an approved conservation plan. Such a proposal specifies and requests funding to cover one or more of the nongame actions described in the approved conservation plan.

§ 83.5 Limitations.

The following limitations shall apply to the eligibility of projects for funding under the Act:

(a) Of the total estimated costs for any project proposed under this Act, not less than 80 percent shall be for work or activities for the principal benefit of nongame fish and wildlife resources or of the public use of these resources.

(b) Upon approval of a conservation plan, all projects must be limited to actions required for implementing or revising the plan or for coordinating or consolidating the plan with other plans.

(c) Not more than 10 percent of the costs of any project which is carried out in lieu of an approved conservation plan, or which is carried out under an approved conservation plan covering only nongame fish and wildlife resources, may be derived from the sale of hunting, fishing, and trapping licenses and from penalties (including forfeitures) for violations of hunting, fishing, and trapping laws of the State.

(d) Not more than 10 percent of the estimated costs for projects to be fund-

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ed shall be for law enforcement activities.

(e) Not more than 10 percent of the cost of implementing any project under this Act shall be funded by in-kind contributions from third parties.

§ 83.6 Appeals.

Any difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determinations rests with the Secretary.

§ 83.7 Availability of funds.

Funds allocated to a State under the Act are available for obligation and expenditure during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a project agreement is approved by the Regional Director.

§ 83.8 Submission of proposals for funding.

To make application for funds allocated under this Act, the State shall submit to the regional director an Application for Federal Assistance.

(a) Each application shall contain such information as the regional director may require to determine if the proposed activities are in accordance with the Act, the provisions of this part, and the standards contained in the Federal Aid Manual.

(b) Applications must be signed by the director of the designated State agency or the official(s) delegated to exercise the authority and responsibilities of such director in committing the State to participation under the Act.

§ 83.9 Conservation plans.

A conservation plan submitted to the regional director for approval shall meet the requirements for substantiality set forth in § 83.12(a) and the standards prescribed in the Federal Aid Manual, and shall:

(a) Identify the species of nongame fish and wildlife, and other fish and wildlife deemed appropriate by the designated State agency which are within the State and are valued for ecological,